

Exhibit 1

CASE SUMMARY**CASE NO. 3659****Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.**§
§
§
§Location: **County Court at Law**
Judicial Officer: **McPherson, Rick**
Filed on: **12/01/2023****CASE INFORMATION**Case Type: **Civil Case - Other**Case Status: **12/01/2023 Filed****PARTY INFORMATION****Plaintiff Bigfoot Energy Services, LLC***Attorneys***O'Connor, Robert D**
Retained
713-647-7511(W)**Defendant Diamond Construction, Inc.****DATE****EVENTS & ORDERS OF THE COURT**

12/01/2023	 Certified Mail-Unexecuted
12/01/2023	 Original Petition (OCA) <i>Plaintiff's Original Petition for Declaratory Judgment and Fraud</i>
12/06/2023	 REQUEST <i>for Citation</i>
12/07/2023	 Certified Mail-Executed
12/14/2023	Citation Diamond Construction, Inc. Served: 12/12/2023
01/04/2024	 REQUEST <i>for Certified Copies</i>

DATE**FINANCIAL INFORMATION**

Defendant Diamond Construction, Inc.
Total Charges
Total Payments and Credits
Balance Due as of 01/04/2024

37.00
37.00
0.00

Plaintiff Bigfoot Energy Services, LLC
Total Charges
Total Payments and Credits
Balance Due as of 01/04/2024

494.00
494.00
0.00



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

3659
CAUSE NO. _____

BIGFOOT ENERGY SERVICES, LLC,	§	IN THE COUNTY COURT
	§	
Plaintiff,	§	
	§	
V.	§	AT LAW
	§	
DIAMOND CONSTRUCTION, INC.,	§	
	§	
Defendant.	§	PANOLA COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
FOR DECLARATORY JUDGMENT AND FRAUD**

TO THE HONORABLE JUDGE OF SAID COURT:

Bigfoot Energy Services, LLC, ("Plaintiff" or "Bigfoot") files this Plaintiff's Original Petition for Declaratory Judgment and Fraud ("Petition") against Diamond Construction, Inc. ("Defendant" or "Diamond") (Plaintiff and Defendant collectively, the "Parties"), and would respectfully show the Court the following:

I. Summary of This Lawsuit

1. A real dispute exists about whether Defendant should have engaged in repairs to a trailer in the amount of \$45,999.99 (tax included), or whether the trailer should've been rendered a total loss; as such, Plaintiff files this Declaratory Judgment action. Plaintiff asserts that Defendant never should have performed repairs to Plaintiff's trailer because the trailer should have been rendered a total loss. However, Defendant failed to render the trailer a total loss and decided to repair it to reap a benefit of \$42,563.03 (labor and materials). This lawsuit has been filed to ask this Court to determine whether the Defendant performed unnecessary services to benefit itself at the expense of Plaintiff, and to hold Defendant accountable for its fraud.



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

II. Discovery Control Plan

2. Plaintiff pleads that discovery should be conducted under Level 1, TEX. R. CIV. P. 190.4 and in accordance with a discovery control plan tailored to the circumstances in this suit.

III. Parties and Service

3. Plaintiff Bigfoot Energy Services, LLC, is a Texas Limited Liability Company with its principal office located in Carthage, Panola County, Texas.

4. Defendant Diamond Construction, Inc., is a Louisiana business corporation, and may be served with process through its registered agent, Robert S. Haynes, 27687 Highway 157, Shongaloo, Louisiana 71072, or wherever he may be found.

IV. Venue and Jurisdiction

5. This is a suit for declaratory relief, pursuant to the Texas Declaratory Judgment Act ("TDJA"), and fraud concerning an invoice for payment for alleged repair services on a trailer. Venue is proper in Panola County, Texas the Parties' performance concerning these services took place, in whole or in part, in this County.

6. The damages and relief sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of less than \$65,000, inclusive of attorneys' fees.

7. This Court has personal jurisdiction over Defendant because Defendant conducted business in Panola County with a Panola County-based company; Defendant solicited Plaintiff's business in Panola County, Texas; and Defendant committed fraud in Panola County, Texas by submitting an invoice for payment to Plaintiff in this County for services that never should have been performed.

V. Factual Background

8. As noted in the summary above, this declaratory judgment and fraud action concerns the Parties' dispute about welding and repair services Defendant allegedly made to a



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

trailer owned by Plaintiff.

9. On July 12, 2023, Defendant submitted Invoice No. 114301 to Bigfoot at its place of business located at 932 South Shelby Road, Carthage, Texas 75633, for repair services allegedly performed on a trailer owned by Plaintiff. The invoice described 261 hours of work, and a total bill of \$45,999.99. See Exhibit 1, attached hereto, the invoice in question.

10. The repair work on Plaintiff's trailer never should have been performed by Defendant. Instead, Defendant should have told Plaintiff that its trailer had been totaled, since the repair costs exceeded 75% of the cash value of the trailer. Even if a new trailer cost of \$50,000 is used as a value metric, the repair costs exceeded this 75% threshold. Alternatively, the value of the repair costs plus the salvage value of the trailer exceeded the fair market value of the used trailer Defendant repaired. Thus, under any metric, repairs never should have been performed.

11. Instead of advising Plaintiff that repairs should not have been performed because the trailer was rendered a total loss, Defendant performed the repairs. This action only served to benefit Defendant since it stood to gain \$42,563.03.

12. In any event, Defendant performed work that never should have been done to repair the trailer, and its invoice represents an excessive and unreasonable charge. Defendant knew this, but proceeded to perform the work and submitted a fraudulent invoice to Plaintiff.

13. The Parties attempted to work out these issues; however, these attempts failed and this lawsuit had to be filed.

VI. Causes of Action

A. Declaratory Judgment.

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Pursuant to the TDJA, Plaintiff asks this court to determine whether Defendant

should be paid its excessive invoice. A justiciable controversy of sufficient immediacy and reality exists between Plaintiff and Defendant, warranting this Court's declaration of the Parties' rights, status or other legal relations concerning this disagreement. Plaintiff is further entitled to recover its reasonable and necessary attorney's fees as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

16. In the alternative, if this Court finds that Defendant performed compensable work, then it should determine the amount that Plaintiff should pay Defendant. Plaintiff contends that the invoiced amount is patently unreasonable, given these circumstances (total loss), and that the invoice should be significantly reduced, if not vitiated by Defendant's fraud. For example, the average U.S. welder makes \$50,000/year. This represents a \$25/hour labor cost. Defendant more than tripled this amount by charging Plaintiff \$85/hour. Plaintiff never agreed to this rate in any purchase order (no purchase order is reflected in the invoice), and the rate represents an excessive fee for welding services in Louisiana. Likewise, the materials were substantially overpriced, and Defendant did not include line items for the materials used and cannot reasonably justify these costs.

B. Claim for Attorney's Fees under TDJA.

17. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

18. As a result of the need for a judicial declaration of the Parties' here, Plaintiff has been compelled to engage the services of the law firm of O'Connor, Mason & Bone, P.C., licensed attorneys, to represent Plaintiff in this matter, and have further agreed to pay said attorneys a reasonable fee for their services. Plaintiff seeks recovery of its reasonable and necessary attorney's fees and costs incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code.



C. Claim for Fraud.

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

A. The defendant made a representation to the plaintiff.

20. Defendant, by and through its employees and authorized agents, represented to Plaintiff that its trailer should be repaired.

B. The representation was material.

21. Defendant's representation was material to Plaintiff's decision to repair the trailer. However, Defendant knew upon its inspection of the trailer that the anticipated repair costs rendered the trailer a total loss.

C. The representation was false.

22. Defendant falsely represented that the trailer should be repaired. It knew that the cost of repair rendered the trailer a total loss.

D. When the defendant made the representation, the defendant: (a) knew the representation was false, or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth.

23. Defendant represented that the trailer should be repaired when its visual inspection of the trailer established that it was a total loss. Defendant knew its representation about repair was false or made the representation recklessly, as a positive assertion, and without knowledge that the repairs should not be undertaken.

E. The defendant made the representation with the intent that the plaintiff act on it.

24. Defendant made its representation that the trailer should be repaired with the intent that Plaintiff would act on it. Defendant knew that the trailer should not be repaired based upon its visual inspection of it. Plaintiff reasonably thought that Defendant knew how to make these

evaluations and relied upon this representation to repair the trailer. In fact, Defendant hid from Plaintiff that the repairs would only serve Defendant's interests.

F. The plaintiff relied on the representation.

25. Plaintiff relied upon Defendant's representation that repairs should be affected to Defendant's trailer.

G. The representation caused the plaintiff injury.

26. Defendant caused Plaintiff injury as follows: (1) the repairs never should have been made and Plaintiff received a \$45,999.99 repair cost that it should not have received; (2) Plaintiff pledged the trailer to a creditor that now insists on a return of the trailer, yet Defendant is holding it hostage while it claims, wrongfully, that Plaintiff is indebted to Defendant, resulting in a double liability to Plaintiff on this single trailer; and (3) the costs Defendant billed were patently unreasonable, as described above.

VII. Conditions Precedent

27. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, or have been waived.

VIII. Prayer

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that, upon final hearing hereof, the Court render final judgment against Defendant, and that Plaintiff be granted the following relief:

- a. A judgment from the Court declaring Plaintiff owes nothing on the disputed invoice; alternatively, that the invoice is unreasonable and finding that reductions are required;
- b. An award of Plaintiff's reasonable and necessary attorneys' fees and expenses incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code;
- c. All damages proximately caused by Defendant's fraud;

- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

DATED: November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Connor

Robert D. O'Connor

State Bar No. 15191250

O'CONOR, MASON & BONE, P.C.

1616 S. Voss, Suite 200

Houston, Texas 77057

Telephone: (713) 647-7511

Facsimile: (713) 647-7512

Email: boconor@ombtxlaw.com

ATTORNEYS FOR PLAINTIFF



A TRUE COPY

I hereby certify

Bobbie Davis

COUNTY CLERK

PANOLA COUNTY, TEXAS

JACKIE McDONALD

DEPUTY CLERK

Diamond Construction, Inc.

P.O. Box 7
Haynesville, LA 71038
(318)846-2641

Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		7/12/2023			
Quantity	Item Code	Description	Price Each	Amount		
261	Labor	Labor to refurbish crushed aluminum tank	85.00	22,185.00T		
1	Material	Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax	20,378.03	20,378.03T		
					3,436.96	
Thank you for your business!			Total		\$45,999.99	

EXHIBIT 1

9 Page of 34 Pages

JAN 04 2024



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

Citation by Certified Mail

Clerk of the Court:
Bobbie Davis, County Clerk
110 South Sycamore, Room 201
Carthage, TX 75633

Attorney or Person Filing Cause:
Robert D O'Connor
1616 S Voss Street Suite 200
Houston TX 77057

The State of Texas

Citation

Cause # 3659

Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.

To: Diamond Construction, Inc.
Agent: Robert S. Haynes
27687 Hwy 157
Shongaloo, LA 71072

You are hereby commanded to appear by filing a written answer to Plaintiff's Original Petition with the Panola County Clerk at or before 10:00 AM of the Monday next after the expiration of twenty (20) days after the date of service hereof. This case is presently pending in the County Court at Law of Panola County, Texas, A copy of Plaintiff's Original Petition, which was filed December 01, 2023 accompanies this citation.

Notice to Defendant: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM on the Monday next following the expiration of twenty (20) days after the date you were served this Citation and Petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](https://www.texaslawhelp.org).

Issued and given under my hand and seal of said Court at office in Carthage, Texas, this the 1st day of December, 2023.



Bobbie Davis, County Clerk
Panola County, Texas

By: Jackie McDonald, Deputy County Clerk

Certificate of Delivery by Certified Mail

Came to hand on December 01, 2023 at _____ o'clock AM / PM and executed the December 01, 2023, by mailing the same to Diamond Construction, Inc., No Known Address by certified mail, return receipt requested, a true copy of this Citation with a copy of the Petition attached thereto.



Bobbie Davis, County Clerk
Panola County, Texas

By: Jackie McDonald, Deputy County Clerk

Attach receipt for mail services and return receipt with signature here:



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK

7020 3160 0001 6086 0266

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ <u>4.35</u>	
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ <u>3.55</u>	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ <u>.87</u>	
Total Postage and Fees \$ <u>5.22</u>	
Sent to <u>Diamond Co Inc / C/O Robert Haynes</u> Street and Apt. No., or PO Box No. <u>21087 Hwy 157</u> City, State, ZIP+4® <u>Shondaloo, LA 71072</u>	
PS Form 3866, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



A TRUE COPY
 I hereby certify
 Bobbie Davis
 COUNTY CLERK
 PANOLA COUNTY, TEXAS
 JACKIE McDONALD
 DEPUTY CLERK

Bobbie Davis, County Clerk
Panola County Courthouse
110 S. Sycamore, Room 201
Carthage, Texas 75633

CERTIFIED MAIL



7020 3160 0001 6086 0266

SHREVEPORT, LA 710 NEOPOST

FIRST-CLASS MAIL

DEC 2023 PM 3 L

12/01/2023

US POSTAGE \$008.77⁰



ZIP 75633
041M11297753

Diamond Construction Inc.
C/O Robert S. Haynes
27687 HWY 157
Shongaloo

INT
7107563332343

711 NFE 1 62270012/02/23
FORWARD TIME EXP RTN TO SEND
DIAMOND CONSTRUCTION
PO BOX 7
HAYNESVILLE LA 71038-0007

RETURN TO SENDER



COPIES
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JEMCDONALD
DEPUTY CLERK

12-7-23

JAN 04 2024

3659
 CAUSE NO. _____

BIGFOOT ENERGY SERVICES, LLC,	§	IN THE COUNTY COURT
	§	
Plaintiff,	§	
	§	
V.	§	AT LAW
	§	
DIAMOND CONSTRUCTION, INC.,	§	
	§	
Defendant.	§	PANOLA COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND FRAUD

TO THE HONORABLE JUDGE OF SAID COURT:

Bigfoot Energy Services, LLC, ("Plaintiff" or "Bigfoot") files this Plaintiff's Original Petition for Declaratory Judgment and Fraud ("Petition") against Diamond Construction, Inc. ("Defendant" or "Diamond") (Plaintiff and Defendant collectively, the "Parties"), and would respectfully show the Court the following:

I. Summary of This Lawsuit

1. A real dispute exists about whether Defendant should have engaged in repairs to a trailer in the amount of \$45,999.99 (tax included), or whether the trailer should've been rendered a total loss; as such, Plaintiff files this Declaratory Judgment action. Plaintiff asserts that Defendant never should have performed repairs to Plaintiff's trailer because the trailer should have been rendered a total loss. However, Defendant failed to render the trailer a total loss and decided to repair it to reap a benefit of \$42,563.03 (labor and materials). This lawsuit has been filed to ask this Court to determine whether the Defendant performed unnecessary services to benefit itself at the expense of Plaintiff, and to hold Defendant accountable for its fraud.



A TRUE COPY
 I hereby certify
 Bobbie Davis
 COUNTY CLERK
 PANOLA COUNTY, TEXAS
 JACKIE McDONALD
 DEPUTY CLERK

13 Page of 34 Pages
 JAN 04 2024

II. Discovery Control Plan

2. Plaintiff pleads that discovery should be conducted under Level 1, TEX. R. CIV. P. 190.4 and in accordance with a discovery control plan tailored to the circumstances in this suit.

III. Parties and Service

3. Plaintiff Bigfoot Energy Services, LLC, is a Texas Limited Liability Company with its principal office located in Carthage, Panola County, Texas.

4. Defendant Diamond Construction, Inc., is a Louisiana business corporation, and may be served with process through its registered agent, Robert S. Haynes, 27687 Highway 157, Shongaloo, Louisiana 71072, or wherever he may be found.

IV. Venue and Jurisdiction

5. This is a suit for declaratory relief, pursuant to the Texas Declaratory Judgment Act ("TDJA"), and fraud concerning an invoice for payment for alleged repair services on a trailer. Venue is proper in Panola County, Texas the Parties' performance concerning these services took place, in whole or in part, in this County.

6. The damages and relief sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of less than \$65,000, inclusive of attorneys' fees.

7. This Court has personal jurisdiction over Defendant because Defendant conducted business in Panola County with a Panola County-based company; Defendant solicited Plaintiff's business in Panola County, Texas; and Defendant committed fraud in Panola County, Texas by submitting an invoice for payment to Plaintiff in this County for services that never should have been performed.

V. Factual Background

8. As noted in the summary above, this declaratory judgment and fraud action concerns the Parties' dispute about welding and repair services Defendant allegedly made to a



trailer owned by Plaintiff.

9. On July 12, 2023, Defendant submitted Invoice No. 114301 to Bigfoot at its place of business located at 932 South Shelby Road, Carthage, Texas 75633, for repair services allegedly performed on a trailer owned by Plaintiff. The invoice described 261 hours of work, and a total bill of \$45,999.99. See Exhibit 1, attached hereto, the invoice in question.

10. The repair work on Plaintiff's trailer never should have been performed by Defendant. Instead, Defendant should have told Plaintiff that its trailer had been totaled, since the repair costs exceeded 75% of the cash value of the trailer. Even if a new trailer cost of \$50,000 is used as a value metric, the repair costs exceeded this 75% threshold. Alternatively, the value of the repair costs plus the salvage value of the trailer exceeded the fair market value of the used trailer Defendant repaired. Thus, under any metric, repairs never should have been performed.

11. Instead of advising Plaintiff that repairs should not have been performed because the trailer was rendered a total loss, Defendant performed the repairs. This action only served to benefit Defendant since it stood to gain \$42,563.03.

12. In any event, Defendant performed work that never should have been done to repair the trailer, and its invoice represents an excessive and unreasonable charge. Defendant knew this, but proceeded to perform the work and submitted a fraudulent invoice to Plaintiff.

13. The Parties attempted to work out these issues; however, these attempts failed and this lawsuit had to be filed.

VI. Causes of Action

A. Declaratory Judgment.

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Pursuant to the TDJA, Plaintiff asks this court to determine whether Defendant



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

should be paid its excessive invoice. A justiciable controversy of sufficient immediacy and reality exists between Plaintiff and Defendant, warranting this Court's declaration of the Parties' rights, status or other legal relations concerning this disagreement. Plaintiff is further entitled to recover its reasonable and necessary attorney's fees as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

16. In the alternative, if this Court finds that Defendant performed compensable work, then it should determine the amount that Plaintiff should pay Defendant. Plaintiff contends that the invoiced amount is patently unreasonable, given these circumstances (total loss), and that the invoice should be significantly reduced, if not vitiated by Defendant's fraud. For example, the average U.S. welder makes \$50,000/year. This represents a \$25/hour labor cost. Defendant more than tripled this amount by charging Plaintiff \$85/hour. Plaintiff never agreed to this rate in any purchase order (no purchase order is reflected in the invoice), and the rate represents an excessive fee for welding services in Louisiana. Likewise, the materials were substantially overpriced, and Defendant did not include line items for the materials used and cannot reasonably justify these costs.

B. Claim for Attorney's Fees under TDJA.

17. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

18. As a result of the need for a judicial declaration of the Parties' here, Plaintiff has been compelled to engage the services of the law firm of O'Connor, Mason & Bone, P.C., licensed attorneys, to represent Plaintiff in this matter, and have further agreed to pay said attorneys a reasonable fee for their services. Plaintiff seeks recovery of its reasonable and necessary attorney's fees and costs incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code.

C. Claim for Fraud.

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

A. The defendant made a representation to the plaintiff.

20. Defendant, by and through its employees and authorized agents, represented to Plaintiff that its trailer should be repaired.

B. The representation was material.

21. Defendant's representation was material to Plaintiff's decision to repair the trailer. However, Defendant knew upon its inspection of the trailer that the anticipated repair costs rendered the trailer a total loss.

C. The representation was false.

22. Defendant falsely represented that the trailer should be repaired. It knew that the cost of repair rendered the trailer a total loss.

D. When the defendant made the representation, the defendant: (a) knew the representation was false, or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth.

23. Defendant represented that the trailer should be repaired when its visual inspection of the trailer established that it was a total loss. Defendant knew its representation about repair was false or made the representation recklessly, as a positive assertion, and without knowledge that the repairs should not be undertaken.

E. The defendant made the representation with the intent that the plaintiff act on it.

24. Defendant made its representation that the trailer should be repaired with the intent that Plaintiff would act on it. Defendant knew that the trailer should not be repaired based upon its visual inspection of it. Plaintiff reasonably thought that Defendant knew how to make these



evaluations and relied upon this representation to repair the trailer. In fact, Defendant hid from Plaintiff that the repairs would only serve Defendant's interests.

F. The plaintiff relied on the representation.

25. Plaintiff relied upon Defendant's representation that repairs should be affected to Defendant's trailer.

G. The representation caused the plaintiff injury.

26. Defendant caused Plaintiff injury as follows: (1) the repairs never should have been made and Plaintiff received a \$45,999.99 repair cost that it should not have received; (2) Plaintiff pledged the trailer to a creditor that now insists on a return of the trailer, yet Defendant is holding it hostage while it claims, wrongfully, that Plaintiff is indebted to Defendant, resulting in a double liability to Plaintiff on this single trailer; and (3) the costs Defendant billed were patently unreasonable, as described above.

VII. Conditions Precedent

27. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, or have been waived.

VIII. Prayer

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that, upon final hearing hereof, the Court render final judgment against Defendant, and that Plaintiff be granted the following relief:

- a. A judgment from the Court declaring Plaintiff owes nothing on the disputed invoice; alternatively, that the invoice is unreasonable and finding that reductions are required;
- b. An award of Plaintiff's reasonable and necessary attorneys' fees and expenses incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code;
- c. All damages proximately caused by Defendant's fraud;



- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

DATED: November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Connor

Robert D. O'Connor

State Bar No. 15191250

O'CONOR, MASON & BONE, P.C.

1616 S. Voss, Suite 200

Houston, Texas 77057

Telephone: (713) 647-7511

Facsimile: (713) 647-7512

Email: boconor@ombtxlaw.com

ATTORNEYS FOR PLAINTIFF



Diamond Construction, Inc.

P.O. Box 7
Haynesville, LA 71038
(318)846-2641

Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		7/12/2023			
Quantity	Item Code	Description	Price Each	Amount		
261	Labor	Labor to refurbish crushed aluminum tank	85.00	22,185.00T		
1	Material	Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax	20,378.03	20,378.03T		
					3,436.96	
Thank you for your business!						Total \$45,999.99

EXHIBIT 1

20 Page of 34
JAN 04 2024



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

OMB
O'CONOR, MASON & BONE, P.C.
ATTORNEYS AT LAW

1616 S. Voss, Suite 200
Houston, Texas 77057

Telephone: (713) 647-7511
Facsimile: (713) 647-7512

December 6, 2023

VIA E-FILE

Panola County Clerk
110 S. Sycamore, Room 201
Carthage, Texas 75633

Re: *Bigfoot Energy Services, LLC v. Diamond Construction, Inc.*; Cause No. 3659, in
the County Court at Law, Panola County, Texas

Dear Clerk:

We are requesting issuance of a new citation for the defendant, Diamond Construction, Inc.
Please issue a citation to be served at the following address:

Diamond Construction, Inc.
c/o Robert S. Haynes
P.O. Box 7
Haynesville, Louisiana 71038

We are also requesting your office to serve the citation by certified mail, return receipt
requested. The citation and certified mail fees will be paid upon filing of this request.

Thank you for your assistance. Please contact our office should you have any questions.

Very truly yours,

Anna C. Ramirez

Anna C. Ramirez
Legal Assistant

/acr

21 Page of 34 Page:
JAN 04 2024



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

Citation by Certified Mail

Clerk of the Court:
Bobbie Davis, County Clerk
110 South Sycamore, Room 201
Carthage, TX 75633

Attorney or Person Filing Cause:
Robert D O'Connor
1616 S Voss Street Suite 200
Houston TX 77057

The State of Texas

Citation

Cause # 3659

Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.

To: Diamond Construction, Inc.
C/O Robert S. Haynes
P.O. Box 7
Haynesville, Louisiana 71038

You are hereby commanded to appear by filing a written answer to Plaintiff's Original Petition with the Panola County Clerk at or before 10:00 AM of the Monday next after the expiration of twenty (20) days after the date of service hereof. This case is presently pending in the County Court at Law of Panola County, Texas, A copy of Plaintiff's Original Petition, which was filed December 01, 2023 accompanies this citation.

Notice to Defendant: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM on the Monday next following the expiration of twenty (20) days after the date you were served this Citation and Petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](https://www.texaslawhelp.org).

Issued and given under my hand and seal of said Court at office in Carthage, Texas, this the 7th day of December, 2023.



Bobbie Davis, County Clerk
Panola County, Texas

Jackie McDonald
By: Jackie McDonald, Deputy County Clerk

Certificate of Delivery by Certified Mail

Came to hand on December 07, 2023 at _____ o'clock AM / PM and executed the December 07, 2023, by mailing the same to Diamond Construction, Inc., No Known Address by certified mail, return receipt requested, a true copy of this Citation with a copy of the Petition attached thereto.



Bobbie Davis, County Clerk
Panola County, Texas

Jackie McDonald
By: Jackie McDonald, Deputy County Clerk

Attach receipt for mail services and return receipt with signature here:



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK

PANOLA COUNTY, TEXAS

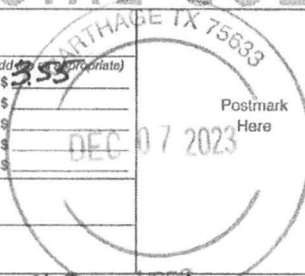
DEPUTY CLERK

22 Page of 34 Pages

JAN 04 2024

0510 9909 1000 0150 0202

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee	\$ <u>4.35</u>
Extra Services & Fees (check box, add fee if appropriate)	\$ <u>2.55</u>
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ <u>.87</u>
Total Postage and Fees	\$ <u>8.77</u>
Sent To: <u>Diamond Cons. Inc. c/o Robert Haynes</u>	
Street and Apt. No., or PO Box No. <u>P.O. Box 1</u>	
City, State, ZIP+4® <u>Hainesville TX 75633</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



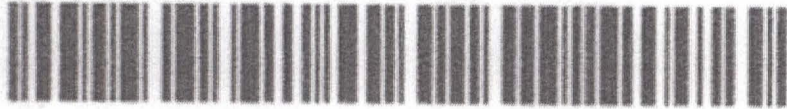
A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Diamond Construction Inc.
 C/O Robert S. Haynes
 P.O. Box 7
 Haynesville, ~~TX~~ LA 71038



9590 9402 8057 2349 6089 18

2. Article Number (Transfer from service label)

7020 3160 0001 6086 0150

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Levi Ware*

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

11/12/2023

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

stricted Delivery

Domestic Return Receipt



TRUE COPY
 I hereby certify
 that the above is a true and correct copy of the original document.

PANDOLFO COUNTY CLERK
 JACOBIE McDONALD
 IDENTITY CLERK

JAN 04 2024

Page of 34
 Pages

USPS TRACKING #



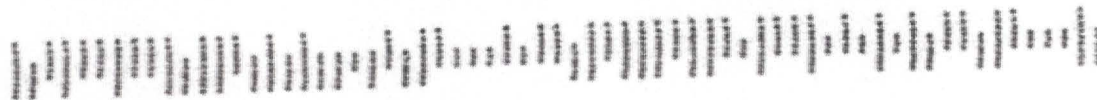
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 8057 2349 6089 18

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Bobbie Davis, County Clerk
Panola County Courthouse
110 South Sycamore, Room 201
Carthage, Texas 75633



A TRUE COPY

I hereby certify

Bobbie Davis

COUNTY CLERK

PANOLA COUNTY, TEXAS

JACKIE McDONALD

DEPUTY CLERK

Page of 34 Pages

JAN 04 2024

3659
 CAUSE NO. _____

BIGFOOT ENERGY SERVICES, LLC,	§	IN THE COUNTY COURT
	§	
Plaintiff,	§	
	§	
V.	§	AT LAW
	§	
DIAMOND CONSTRUCTION, INC.,	§	
	§	
Defendant.	§	PANOLA COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
 FOR DECLARATORY JUDGMENT AND FRAUD**

TO THE HONORABLE JUDGE OF SAID COURT:

Bigfoot Energy Services, LLC, ("Plaintiff" or "Bigfoot") files this Plaintiff's Original Petition for Declaratory Judgment and Fraud ("Petition") against Diamond Construction, Inc. ("Defendant" or "Diamond") (Plaintiff and Defendant collectively, the "Parties"), and would respectfully show the Court the following:

I. Summary of This Lawsuit

1. A real dispute exists about whether Defendant should have engaged in repairs to a trailer in the amount of \$45,999.99 (tax included), or whether the trailer should've been rendered a total loss; as such, Plaintiff files this Declaratory Judgment action. Plaintiff asserts that Defendant never should have performed repairs to Plaintiff's trailer because the trailer should have been rendered a total loss. However, Defendant failed to render the trailer a total loss and decided to repair it to reap a benefit of \$42,563.03 (labor and materials). This lawsuit has been filed to ask this Court to determine whether the Defendant performed unnecessary services to benefit itself at the expense of Plaintiff, and to hold Defendant accountable for its fraud.



A TRUE COPY
 I hereby certify
 Bobbie Davis
 COUNTY CLERK
 PANOLA COUNTY, TEXAS
 JACKIE McDONALD
 DEPUTY CLERK

26 Page of 34 Pages

JAN 04 2024

II. Discovery Control Plan

2. Plaintiff pleads that discovery should be conducted under Level 1, TEX. R. CIV. P. 190.4 and in accordance with a discovery control plan tailored to the circumstances in this suit.

III. Parties and Service

3. Plaintiff Bigfoot Energy Services, LLC, is a Texas Limited Liability Company with its principal office located in Carthage, Panola County, Texas.

4. Defendant Diamond Construction, Inc., is a Louisiana business corporation, and may be served with process through its registered agent, Robert S. Haynes, 27687 Highway 157, Shongaloo, Louisiana 71072, or wherever he may be found.

IV. Venue and Jurisdiction

5. This is a suit for declaratory relief, pursuant to the Texas Declaratory Judgment Act ("TDJA"), and fraud concerning an invoice for payment for alleged repair services on a trailer. Venue is proper in Panola County, Texas the Parties' performance concerning these services took place, in whole or in part, in this County.

6. The damages and relief sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff seeks monetary relief of less than \$65,000, inclusive of attorneys' fees.

7. This Court has personal jurisdiction over Defendant because Defendant conducted business in Panola County with a Panola County-based company; Defendant solicited Plaintiff's business in Panola County, Texas; and Defendant committed fraud in Panola County, Texas by submitting an invoice for payment to Plaintiff in this County for services that never should have been performed.

V. Factual Background

8. As noted in the summary above, this declaratory judgment and fraud action concerns the Parties' dispute about welding and repair services Defendant allegedly made to a



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

trailer owned by Plaintiff.

9. On July 12, 2023, Defendant submitted Invoice No. 114301 to Bigfoot at its place of business located at 932 South Shelby Road, Carthage, Texas 75633, for repair services allegedly performed on a trailer owned by Plaintiff. The invoice described 261 hours of work, and a total bill of \$45,999.99. See Exhibit 1, attached hereto, the invoice in question.

10. The repair work on Plaintiff's trailer never should have been performed by Defendant. Instead, Defendant should have told Plaintiff that its trailer had been totaled, since the repair costs exceeded 75% of the cash value of the trailer. Even if a new trailer cost of \$50,000 is used as a value metric, the repair costs exceeded this 75% threshold. Alternatively, the value of the repair costs plus the salvage value of the trailer exceeded the fair market value of the used trailer Defendant repaired. Thus, under any metric, repairs never should have been performed.

11. Instead of advising Plaintiff that repairs should not have been performed because the trailer was rendered a total loss, Defendant performed the repairs. This action only served to benefit Defendant since it stood to gain \$42,563.03.

12. In any event, Defendant performed work that never should have been done to repair the trailer, and its invoice represents an excessive and unreasonable charge. Defendant knew this, but proceeded to perform the work and submitted a fraudulent invoice to Plaintiff.

13. The Parties attempted to work out these issues; however, these attempts failed and this lawsuit had to be filed.

VI. Causes of Action

A. Declaratory Judgment.

14. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

15. Pursuant to the TDJA, Plaintiff asks this court to determine whether Defendant

should be paid its excessive invoice. A justiciable controversy of sufficient immediacy and reality exists between Plaintiff and Defendant, warranting this Court's declaration of the Parties' rights, status or other legal relations concerning this disagreement. Plaintiff is further entitled to recover its reasonable and necessary attorney's fees as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

16. In the alternative, if this Court finds that Defendant performed compensable work, then it should determine the amount that Plaintiff should pay Defendant. Plaintiff contends that the invoiced amount is patently unreasonable, given these circumstances (total loss), and that the invoice should be significantly reduced, if not vitiated by Defendant's fraud. For example, the average U.S. welder makes \$50,000/year. This represents a \$25/hour labor cost. Defendant more than tripled this amount by charging Plaintiff \$85/hour. Plaintiff never agreed to this rate in any purchase order (no purchase order is reflected in the invoice), and the rate represents an excessive fee for welding services in Louisiana. Likewise, the materials were substantially overpriced, and Defendant did not include line items for the materials used and cannot reasonably justify these costs.

B. Claim for Attorney's Fees under TDJA.

17. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

18. As a result of the need for a judicial declaration of the Parties' here, Plaintiff has been compelled to engage the services of the law firm of O'Connor, Mason & Bone, P.C., licensed attorneys, to represent Plaintiff in this matter, and have further agreed to pay said attorneys a reasonable fee for their services. Plaintiff seeks recovery of its reasonable and necessary attorney's fees and costs incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code.



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

C. Claim for Fraud.

19. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

A. The defendant made a representation to the plaintiff.

20. Defendant, by and through its employees and authorized agents, represented to Plaintiff that its trailer should be repaired.

B. The representation was material.

21. Defendant's representation was material to Plaintiff's decision to repair the trailer. However, Defendant knew upon its inspection of the trailer that the anticipated repair costs rendered the trailer a total loss.

C. The representation was false.

22. Defendant falsely represented that the trailer should be repaired. It knew that the cost of repair rendered the trailer a total loss.

D. When the defendant made the representation, the defendant: (a) knew the representation was false, or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth.

23. Defendant represented that the trailer should be repaired when its visual inspection of the trailer established that it was a total loss. Defendant knew its representation about repair was false or made the representation recklessly, as a positive assertion, and without knowledge that the repairs should not be undertaken.

E. The defendant made the representation with the intent that the plaintiff act on it.

24. Defendant made its representation that the trailer should be repaired with the intent that Plaintiff would act on it. Defendant knew that the trailer should not be repaired based upon its visual inspection of it. Plaintiff reasonably thought that Defendant knew how to make these

evaluations and relied upon this representation to repair the trailer. In fact, Defendant hid from Plaintiff that the repairs would only serve Defendant's interests.

F. The plaintiff relied on the representation.

25. Plaintiff relied upon Defendant's representation that repairs should be affected to Defendant's trailer.

G. The representation caused the plaintiff injury.

26. Defendant caused Plaintiff injury as follows: (1) the repairs never should have been made and Plaintiff received a \$45,999.99 repair cost that it should not have received; (2) Plaintiff pledged the trailer to a creditor that now insists on a return of the trailer, yet Defendant is holding it hostage while it claims, wrongfully, that Plaintiff is indebted to Defendant, resulting in a double liability to Plaintiff on this single trailer; and (3) the costs Defendant billed were patently unreasonable, as described above.

VII. Conditions Precedent

27. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, or have been waived.

VIII. Prayer

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that, upon final hearing hereof, the Court render final judgment against Defendant, and that Plaintiff be granted the following relief:

- a. A judgment from the Court declaring Plaintiff owes nothing on the disputed invoice; alternatively, that the invoice is unreasonable and finding that reductions are required;
- b. An award of Plaintiff's reasonable and necessary attorneys' fees and expenses incurred in the prosecution of Plaintiff's case as are equitable and just pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code;
- c. All damages proximately caused by Defendant's fraud;



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

- d. Prejudgment and post-judgment interest as allowed by law;
- e. All costs of suit; and
- f. All other relief, at law and in equity, to which Plaintiff may be justly entitled.

DATED: November 30, 2023

Respectfully submitted,

By: /s/ Robert D. O'Connor

Robert D. O'Connor

State Bar No. 15191250

O'CONOR, MASON & BONE, P.C.

1616 S. Voss, Suite 200

Houston, Texas 77057

Telephone: (713) 647-7511

Facsimile: (713) 647-7512

Email: boconor@ombtxlaw.com

ATTORNEYS FOR PLAINTIFF



A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

Diamond Construction, Inc.

P.O. Box 7
 Haynesville, LA 71038
 (318)846-2641

Invoice

Date	Invoice #
7/12/2023	114301

Bill To
BigFoot Energy Service 932 South Shelby Carthage, TX 75633

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		7/12/2023			
Quantity	Item Code	Description	Price Each	Amount		
261	Labor	Labor to refurbish crushed aluminum tank	85.00	22,185.00T		
1	Material	Materials to refurbish tank trailer as requested; 5 ft aluminum tank section, 12 ring ribs, 2 hose troughs, front and rear sections of hose troughs, 1 aluminum fender, 20" aluminum man way, 1 light box, 3 tombstone roll overs, 20' 2x2x1/4 aluminum sq tubing, 2 4" aluminum flat face 150 flanges, fender U-bolts, gaskets and studs, running lights and marker lights. ** tank trailer was pressure tested upon completion of work ** Sales Tax	20,378.03	20,378.03T		
					3,436.96	
Thank you for your business!						Total \$45,999.99

EXHIBIT 1

33 Page of 34 Pages

JAN 04 2024



A TRUE COPY
 I hereby certify
 Bobbie Davis
 COUNTY CLERK
 PANOLA COUNTY, TEXAS
 JACKIE McDONALD
 DEPUTY CLERK

G.R. (RANDY) AKIN, P.C.
ATTORNEY - MEDIATOR

Randy Akin - GRA@RandyAkin.com

Board Certified

Texas Board of Legal Specialization

Personal Injury Trial Law

American Board of Trial Advocacy

National Board of Trial Advocacy

Civil Trial Advocate

Associate: Gregory Burton - Greg@RandyAkin.com

Austin Bank Building
3400 West Marshall Avenue
Suite 300
Longview, Texas 75604
Telephone: (903) 297-8929
Fax: (903) 297-9046
www.RandyAkin.com

January 4, 2024

Ms. Bobby Davis
Panola County County Clerk

Via EFile

Re: Cause No. 3659; Bigfoot Energy Services, LLC v. Diamond Construction, Inc.

Dear Ms. Davis:


Our office is requesting a certified copy of the docket sheet and all filings in the referenced case.

Thank you for your attention to this matter. Should you have any questions or comments, please feel free to contact me.

Sincerely,

/s/ Brittany Ramthun

Brittany Ramthun
Legal Assistant to Gregory Burton
/br

 A TRUE COPY
I hereby certify
Bobbie Davis
COUNTY CLERK
PANOLA COUNTY, TEXAS
JACKIE McDONALD
DEPUTY CLERK

34 Page of 34 Pages

JAN 04 2024

County Clerk's Certificate

The State of Texas

County of Panola

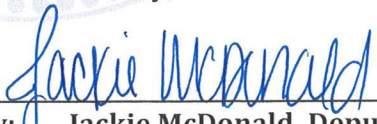
I, Bobbie Davis, County Clerk of Panola County, Texas, do hereby certify that the foregoing instrument(s) filed for record in this office in Cause No. **3659, Bigfoot Energy Services, LLC vs. Diamond Construction, Inc.** are the same as appears from the originals now on file and/or of record in the Probate Minutes of said County and State:

1. Civil Case Summary
2. Plaintiff's Original Petition
3. Citation by Certified Mail - Unexecuted
4. Request for Citation
5. Citation by Certified Mail - Executed
6. Request for Certified Copies

Given under my hand and official seal of office this the 4th day of January, 2024.



Bobbie Davis, County Clerk
Panola County, Texas


By: Jackie McDonald, Deputy County Clerk